

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

LUIS A. VAZQUEZ,

Plaintiff,

v.

9:06-CV-0213
(TJM)(RFT)

GARY GREENE, Superintendent; M. McALLISTER,
Counselor, Great Meadow Correctional Facility; N.
VADNAIS, Senior Counselor, Great Meadow Correctional
Facility; CAPT. KELLY; SGT. MURRAY,

Defendants.

APPEARANCES:

LUIS A. VAZQUEZ
Plaintiff, *pro se*

THOMAS J. McAVOY, SENIOR JUDGE

DECISION and ORDER

By Decision and Order filed April 25, 2006, this Court ruled that the complaint filed by *pro se* plaintiff Luis Vazquez failed to state a claim against the named defendants upon which relief could be granted pursuant to 42 U.S.C. § 1983. Dkt. No. 6 at 2-5. In light of his *pro se* status, plaintiff was afforded an opportunity to file an amended complaint. *Id.* at 5-7.

Plaintiff's amended complaint is presently before this Court for consideration. Dkt. No. 8. Plaintiff has also filed a motion for a preliminary injunction. Dkt. No. 9.

In its prior Decision and Order, the Court determined that plaintiff's claims that his personal property was being wrongfully withheld by the defendants were not sufficient to state a claim for the violation of his federal constitutional and/or statutory rights. Dkt. No. 6 at 2-5. The Court also noted that plaintiff had failed to properly identify the individuals he sought to name as defendants in this action. *Id.* at 3.

Upon review of plaintiffs' amended complaint, the Court finds that plaintiff has failed to cure the deficiencies discussed by the Court in its prior Decision and Order. As in his original pleading, plaintiff alleges in his amended complaint that since his arrival at Great Meadow Correctional Facility in December, 2005, his personal belongings have been withheld and his incoming mail, particularly books and music, is not being delivered to him. Dkt. No. 8 at 1-3.¹ In addition, plaintiff alleges in conclusory terms that he is being extorted (*Id.* at 3), and that his meals have been tampered with. Dkt. No. 9 at 1.²

Read in a light most favorable to plaintiff, the Court finds that the claims asserted in the amended complaint are not sufficient state a claim pursuant to 42 U.S.C. § 1983 for the violation of plaintiff's constitutional and statutory rights. As noted in the Court's prior Decision and Order, the wrongful withholding of personal property does not itself state a claim for the violation of an inmate's federal constitutional and statutory rights. Moreover, while such a deprivation may, in certain circumstances, infringe an inmate's right to access the courts (see Dkt. No. 6 at 4), plaintiff has not set forth in the amended complaint facts sufficient to state a claim that his Sixth Amendment rights have been violated.³

Accordingly, this action is dismissed due to plaintiff's failure to file an amended

¹ Plaintiff claims and that he is being given books from the facility which he has already read. *Id.* at 2-3.

² In light of plaintiff's *pro se* status, the Court has also reviewed the factual allegations in plaintiff's motion for injunctive relief.

³ Plaintiff appears to be receiving his legal mail from this Court. See Dkt. No. 9 at ex. A.

complaint which states a claim upon which relief may be granted by this Court.

In light of the dismissal of this action, plaintiff's motion for injunctive relief is denied.

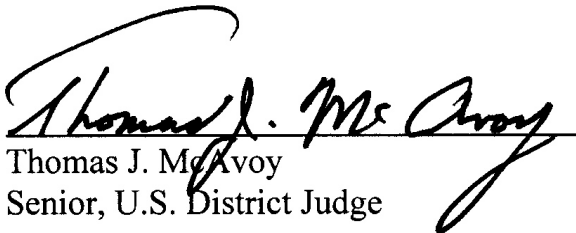
WHEREFORE, it is hereby

ORDERED, this action is dismissed, and it is further

ORDERED, that plaintiff's motion for a preliminary injunction (Dkt. No. 9) is denied as moot, and it is further

ORDERED, that the Clerk serve a copy of this Order on plaintiff by regular mail.

Dated: July 11, 2006


Thomas J. McAvoy
Senior, U.S. District Judge